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19 **COPY**

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN JOSE DIVISION

23 In re ARIBA, INC.
24 DERIVATIVE LITIGATION

25) CV-03-02172 JF
Assigned to Hon. Jeremy Fogel

26 This Document Relates To:

27 ALL ACTIONS

28)
CONSOLIDATED VERIFIED
SHAREHOLDER DERIVATIVE
COMPLAINT FOR VIOLATION OF THE
SARBANES-OXLEY ACT, BREACH OF
FIDUCIARY DUTY, ABUSE OF
CONTROL, GROSS MANAGEMENT,
WASTE OF CORPORATE ASSETS,
UNJUST ENRICHMENT AND
VIOLATIONS OF CALIFORNIA
CORPORATIONS CODE

DEMAND FOR JURY TRIAL

1 Plaintiffs, by their attorneys, submit this Verified Derivative Complaint (the "Complaint")
 2 against the defendants named herein.

3 **NATURE OF THE ACTION**

4 1. This is a shareholder derivative action brought by a shareholder of Ariba, Inc. ("Ariba"
 5 or the "Company"), on behalf of the Company against certain of its officers and directors seeking to
 6 remedy defendants' violations of California law, and violations of the Sarbanes-Oxley Act, breaches
 7 of fiduciary duties, abuse of control, gross mismanagement, waste of corporate assets, unjust
 8 enrichment and violations of California Corporations Code which occurred between October 1999
 9 and the present (the "Relevant Period") and which have caused substantial losses to Ariba and other
 10 damages, such as to its reputation and goodwill.

11 **JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 in that
 13 plaintiff's claims arise in part out of the laws of the United States, including the Sarbanes-Oxley Act
 14 of 2002, and pursuant to 28 U.S.C. §1332(a)(1) in that plaintiff and defendants are citizens of different
 15 states and the matter in controversy exceeds \$75,000, exclusive of interest and costs. Nominal
 16 defendant Ariba is a Delaware corporation and has its principal place of business in California.

17 3. Venue is proper in this District pursuant to 28 U.S.C. §1391(a), in that many of the acts
 18 and the conduct constituting the violations of law complained of herein occurred in this District, and
 19 because nominal defendant Ariba maintains its principal executive offices in this District.

20 **INTRADISTRICT ASSIGNMENT**

21 4. This action is properly assigned to the San Jose Division of this District pursuant to
 22 Civil L.R. 3-5(b) because nominal defendant Ariba is located in Santa Clara County.

23 **SUMMARY OF THE ACTION**

24 5. Ariba is a spend-management software solutions provider. Ariba provides software,
 25 services and network access to enable corporations to evaluate and manage the cash costs associated
 26 with running their business. The Ariba Enterprise Spend Management solution is an integrated suite
 27 of applications and services that provides customers with a single solution to analyze and manage

1 their spending on items such as commodities, raw materials, operating resources, services, temporary
2 labor, travel, and maintenance, repair and operations equipment.

3 6. This action results from defendants' causing and allowing Ariba to announce that it will
4 have to restate its financial statements for the fiscal years ended September 30, 2001 and 2000 and
5 for the quarters ending December 31, 1999 through June 30, 2002 because of improper accounting
6 transactions. Additionally, while in possession of information concerning these transactions, the
7 defendants sold over \$1.2 billion worth of Ariba shares during the Relevant Period.

8 7. On January 15, 2003, defendants caused the Company to issue a press release entitled,
9 "Ariba Provides Update on Accounting Review and Restatement of Financial Statements." The press
10 release stated in part:

11 Ariba, Inc. announced today that it will restate its financial statements for the fiscal
12 years ended September 30, 2001 and 2000 and for the quarters ended March 31, 2000
13 through June 30, 2002 as a result of an ongoing review of accounting matters. The
company also announced that because this review is not yet completed, it has not yet
filed its annual report on Form 10-K for the fiscal year ended September 30, 2002 with
the Securities and Exchange Commission.

14 8. On April 10, 2003, after completing its accounting review the defendants caused the
15 Company to announce that as a result of its review it has restated its financial statements for the fiscal
16 years ended September 30, 2000 and 2001, and for the quarters ended December 31, 1999 through
17 June 30, 2002.

THE PARTIES

19 9. Plaintiff Keith Bernhardt ("Bernhardt") is, and at times relevant hereto was, an owner
20 and holder of Ariba common stock. Bernhardt is a citizen of Wyoming.

21 10. Plaintiff Leonard Cypcar (“Cypcar”) is, and at times relevant hereto was, an owner and
22 holder of Ariba common stock. Cypcar is a citizen of Wisconsin.

23 11. Nominal defendant Ariba is a corporation organized and existing under the laws of the
24 State of Delaware with its headquarters located at 807 11th Avenue, Sunnyvale, California, 94089.

25 12. Defendant Keith J. Krach ("Krach") is, and at all times relevant hereto was, Chairman
26 of the Board of Directors and the former President and Chief Executive Officer ("CEO") of Ariba.
27 Krach is a citizen of California. Because of Krach's position, he knew the adverse non-public

1 information about the business of Ariba, as well as its improper accounting transactions, finances,
2 markets and present and future business prospects, via access to internal corporate documents,
3 conversations and connections with other corporate officers and employees, attendance at
4 management and Board of Directors' meetings and committees thereof and via reports and other
5 information provided to him in connection therewith. During the Relevant Period, Krach participated
6 in the issuance of false and/or misleading statements, including the preparation of the false and/or
7 misleading press releases and SEC filings. During the Relevant Period, Krach sold over 4.5 million
8 shares of Ariba stock for proceeds of over \$193.7 million. For FY:01, FY:00 and FY:99, Ariba paid
9 Krach \$280,716, \$252,808 and \$166,983 respectively in salary, bonus and other compensation and
10 in 1999 granted him 1,600,000 options to purchase Ariba stock.

11 13. Defendant Robert M. Calderoni ("Calderoni") is President, CEO and a director of
12 Ariba, and has been since October 17, 2001. On information and belief Calderoni is a citizen of
13 California. Because of Calderoni's positions, he knew the adverse non-public information about the
14 business of Ariba, as well as its improper accounting transactions, finances, markets and present and
15 future business prospects, via access to internal corporate documents, conversations and connections
16 with other corporate officers and employees, attendance at management and Board of Directors'
17 meetings and committees thereof and via reports and other information provided to him in connection
18 therewith. During the Relevant Period, Calderoni participated in the issuance of false and/or
19 misleading statements, including the preparation of the false and/or misleading press releases and SEC
20 filings. For FY:01, Ariba paid Calderoni \$2,536,705 in salary, bonus and other compensation and
21 granted him 2,500,000 options to purchase Ariba stock.

22 14. Defendant Robert E. Knowling, Jr. ("Knowling") is a director of Ariba and has been
23 since July 2000. Knowling is a citizen of Colorado. Because of Knowling's position, he knew the
24 adverse non-public information about the business of Ariba, as well as its improper accounting
25 transactions, finances, markets and present and future business prospects, via access to internal
26 corporate documents, conversations and connections with other corporate officers and employees,
27 attendance at Board of Directors' meetings and committees thereof and via reports and other
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1 information provided to him in connection therewith. During the Relevant Period, Knowling
 2 participated in the issuance of false and/or misleading statements, including the preparation of the
 3 false and/or misleading press releases and SEC filings.

4 15. Defendant Robert C. Kagle ("Kagle") is, and at all times relevant hereto was, a director
 5 of Ariba. Kagle is a citizen of California. Because of Kagle's position, he knew the adverse
 6 non-public information about the business of Ariba, as well as its improper accounting transactions,
 7 finances, markets and present and future business prospects, via access to internal corporate
 8 documents, conversations and connections with other corporate officers and employees, attendance
 9 at Board of Directors' meetings and committees thereof and via reports and other information provided
 10 to him in connection therewith. During the Relevant Period, Kagle participated in the issuance of
 11 false and/or misleading statements, including the preparation of the false and/or misleading press
 12 releases and SEC filings. During the Relevant Period, Kagle sold 266,000 shares of Ariba stock for
 13 proceeds of over \$32 million.

14 16. Defendant Paul Hegarty ("Hegarty") was a director of Ariba up until October 30, 2002.
 15 Hegarty is a citizen of California. Because of Hegarty's position, he knew the adverse non-public
 16 information about the business of Ariba, as well as its improper accounting transactions, finances,
 17 markets and present and future business prospects, via access to internal corporate documents,
 18 conversations and connections with other corporate officers and employees, attendance at Board of
 19 Directors' meetings and committees thereof and via reports and other information provided to him in
 20 connection therewith. During the Relevant Period, Hegarty participated in the issuance of false and/or
 21 misleading statements, including the preparation of the false and/or misleading press releases and SEC
 22 filings. During the Relevant Period, Hegarty sold over 2.5 million shares of Ariba stock for proceeds
 23 of over \$126.9 million.

24 17. Defendant John B. Mumford ("Mumford") was a director of Ariba up until April 30,
 25 2001. Mumford is a citizen of California. Because of Mumford's position, he knew the adverse
 26 non-public information about the business of Ariba, as well as its improper accounting transactions,
 27 finances, markets and present and future business prospects, via access to internal corporate

1 documents, conversations and connections with other corporate officers and employees, attendance
 2 at Board of Directors' meetings and committees thereof and via reports and other information provided
 3 to him in connection therewith. During the Relevant Period, Mumford participated in the issuance
 4 of false and/or misleading statements, including the preparation of the false and/or misleading press
 5 releases and SEC filings. During the Relevant Period, Mumford sold 333,076 shares of Ariba stock
 6 for proceeds of over \$16.9 million.

7 18. Defendant Hatim A. Tyabji ("Tyabji") was a director of Ariba up until October 17,
 8 2001. Tyabji is a citizen of California. Because of Tyabji's position, he knew the adverse non-public
 9 information about the business of Ariba, as well as its improper accounting transactions, finances,
 10 markets and present and future business prospects, via access to internal corporate documents,
 11 conversations and connections with other corporate officers and employees, attendance at Board of
 12 Directors' meetings and committees thereof and via reports and other information provided to him in
 13 connection therewith. During the Relevant Period, Tyabji participated in the issuance of false and/or
 14 misleading statements, including the preparation of the false and/or misleading press releases and SEC
 15 filings. During the Relevant Period, Tyabji sold 243,000 shares of Ariba stock for proceeds of over
 16 \$12.7 million.

17 19. Defendant Lawrence A. Mueller ("Mueller") was the former CEO, President, Chief
 18 Operating Officer of Ariba and was a director from April 30, 2001 until July 19, 2001. Mueller is a
 19 citizen of Colorado. Because of Mueller's position, he knew the adverse non-public information about
 20 the business of Ariba, as well as its improper accounting transactions, finances, markets and present
 21 and future business prospects, via access to internal corporate documents, conversations and
 22 connections with other corporate officers and employees, attendance at Board of Directors' meetings
 23 and committees thereof and via reports and other information provided to him in connection
 24 therewith. During the Relevant Period, Mueller participated in the issuance of false and/or misleading
 25 statements, including the preparation of the false and/or misleading press releases and SEC filings.
 26 During the Relevant Period, Mueller sold 150,000 shares of Ariba stock for proceeds of over \$19.7
 27 million. For FY:01 and FY:00, Ariba paid Mueller \$8,108,645 and \$385,138 respectively in salary,
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45. After further investigation, the Company has further determined that chartered air services provided personally by Krach to Mueller should be treated similarly as a capital contribution from Krach to Ariba and a payment of compensation from the Company to Mueller. These services were provided over the period from September 2000 through July 2001 at a total cost of \$1.2 million.

46. In addition, Ariba has concluded that certain stock options issued to a limited number of individuals by companies that Ariba acquired during fiscal 2000 should be accounted for as stock-based compensation expense to Ariba, rather than amortized as goodwill. As a result, an increase in non-cash stock-based compensation expense and a reduction of goodwill amortization expense will be reflected in Ariba's restated financial statements for fiscal 2000, 2001 and 2002.

47. As a result of these improper accounting transactions, the Individual Defendants have caused the Company to restate their financials for 2000, 2001 and 2002.

IMPROPER STATEMENTS

48. On January 11, 2000, the Individual Defendants caused the Company to issue a press release entitled, "Ariba Announces Record First Quarter Revenues of \$23.5 Million, Up 243%; Net Loss Per Share \$0.07, Beats First Call Estimates." The press release stated in part:

Ariba, Inc., the leader in business-to-business electronic commerce, today announced record results for the first quarter ended December 31, 1999.

Revenues for the first quarter of fiscal 2000 marked the largest quarter in Ariba's history at \$23.5 million, up 243 percent from the same period last year. Net loss for the quarter excluding the amortization of stock-based compensation was \$5.6 million or a loss of \$0.07 per share, beating the First Call consensus estimate of a loss of \$0.11 per share. During the corresponding quarter in fiscal 1999, the net loss was \$1.2 million or a loss of \$0.07 per share, excluding the amortization of stock-based compensation. Including the amortization of stock-based compensation, net loss for the first quarter of fiscal 2000 was \$10.3 million or a loss of \$0.13 per share.

49. On April 12, 2000, the Individual Defendants caused the Company to issue a press release entitled, "Ariba Announces Record Second Quarter Revenues of \$40 Million, Up 322%; Net Loss Per Share \$0.06, Beats First Call Estimates." The press release stated in part:

Ariba, Inc., the leading business-to-business (B2B) eCommerce platform provider, today announced record results for the second quarter ended March 21, 2000.

Revenues for the second quarter of fiscal 2000 marked the largest quarter in Ariba's history at \$40.0 million, up 322 percent from the same period last year. Net loss for the quarter excluding non-operating charges was \$11.5 million or a loss of

1 this time the Individual Defendants caused the Company to conceal the true fact that Ariba was
2 misrepresenting its financial results. In addition, defendants also made other specific, false statements
3 about Ariba's accounting transactions and financial performance, as alleged herein.

4 41. The purpose and effect of the Individual Defendants' conspiracy, common enterprise,
5 and/or common course of conduct was, among other things, to disguise the Individual Defendants'
6 violations of law, breaches of fiduciary duty, abuse of control, gross mismanagement, waste of
7 corporate assets and unjust enrichment; to conceal adverse information concerning the Company's
8 operations, financial condition, and future business prospects; and to artificially inflate the price of
9 Ariba common stock so they could: (i) dispose of over \$1.2 billion of their personally held stock; and
10 (ii) protect and enhance their executive and directorial positions and the substantial compensation and
11 prestige they obtained as a result thereof.

12 42. The Individual Defendants accomplished their conspiracy, common enterprise, and/or
13 common course of conduct by causing the Company to purposefully, recklessly or negligently
14 misrepresent its financial results. Because the actions described herein occurred under the authority
15 of the Board of Directors, each of the Individual Defendants was a direct, necessary, and substantial
16 participant in the conspiracy, common enterprise, and/or common course of conduct complained of
17 herein.

18 43. Each of the Individual Defendants aided and abetted and rendered substantial
19 assistance in the wrongs complained of herein. In taking such actions to substantially assist the
20 commission of the wrongdoing complained of herein, each Individual Defendant acted with
21 knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing,
22 and was aware of his overall contribution to and furtherance of the wrongdoing.

23 BACKGROUND

24 44. During the Relevant Period, defendants should have treated a \$10 million payment
25 provided personally by Krach in March 2001 to Mueller as a \$10 million capital contribution from
26 Krach to Ariba and the payment of compensation from Ariba to Mueller, not as a personal transaction.
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1 to outside counsel; and

2 b. Costs incurred in investigating and defending Ariba and certain officers in the
 3 class actions, plus potentially millions of dollars in settlements or to satisfy an adverse judgment.

4 37. Moreover, these actions have irreparably damaged Ariba's corporate image and
 5 goodwill. For at least the foreseeable future, Ariba will suffer from what is known as the "liar's
 6 discount," a term applied to the stocks of companies who have been implicated in illegal behavior and
 7 have misled the investing public, such that Ariba's ability to raise equity capital or debt on favorable
 8 terms in the future is now impaired.

9 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

10 38. In committing the wrongful acts alleged herein, the Individual Defendants have
 11 pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and
 12 conspired with one another in furtherance of their common plan or design. In addition to the wrongful
 13 conduct herein alleged as giving rise to primary liability, the Individual Defendants further aided and
 14 abetted and/or assisted each other in breach of their respective duties.

15 39. During all times relevant hereto, the Individual Defendants collectively and
 16 individually initiated a course of conduct which was designed to and did: (i) conceal the fact that the
 17 Company was improperly misrepresenting its financial results, in order to allow defendants to
 18 artificially inflate the price of the Company's shares; (ii) maintain the Individual Defendants'
 19 executive and directorial positions at Ariba, and the profits, power and prestige which the Individual
 20 Defendants enjoyed as a result of these positions; and (iii) deceive the investing public, including
 21 shareholders of Ariba, regarding the Individual Defendants' management of Ariba's operations, the
 22 Company's financial health and stability, and future business prospects, specifically related to the
 23 Company's financials which had been misrepresented by defendants throughout the Relevant Period.
 24 In furtherance of this plan, conspiracy and course of conduct, the Individual Defendants collectively
 25 and individually took the actions set forth herein.

26 40. The Individual Defendants engaged in a conspiracy, common enterprise, and/or
 27 common course of conduct commencing by at least October 1999 and continuing thereafter. During
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1 Company's financial results and prospects, and ensuring that the Company maintained an adequate
2 system of financial controls such that the Company's financial reporting would be true and accurate
3 at all times;

4 e. remain informed as to how Ariba conducted its operations, and, upon receipt
5 of notice or information of imprudent or unsound conditions or practices, to make reasonable inquiry
6 in connection therewith, and to take steps to correct such conditions or practices and make such
7 disclosures as necessary to comply with federal and state securities laws; and

8 f. ensure that the Company was operated in a diligent, honest, and prudent manner
9 in compliance with all applicable federal, state, and local laws, rules, and regulations.

10 35. Each Individual Defendant, by virtue of his or her position as a director and/or officer,
11 owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith and the
12 exercise of due care and diligence in the management and administration of the affairs of the
13 Company, as well as in the use and preservation of its property and assets. The conduct of the
14 Individual Defendants complained of herein involves a knowing and culpable violation of their
15 obligations as directors and officers of Ariba, the absence of good faith on their part, and a reckless
16 disregard for their duties to the Company and its shareholders which the Individual Defendants were
17 aware or should have been aware posed a risk of serious injury to the Company. The conduct of the
18 Individual Defendants who were also officers and/or directors of the Company during the Relevant
19 Period has been ratified by the remaining Individual Defendants who collectively comprised all of
20 Ariba's Board during the Relevant Period.

21 36. The Individual Defendants breached their duties of loyalty and good faith by causing
22 the Company to misrepresent its financial results and prospects, as detailed herein *infra*, and by failing
23 to prevent such illegal actions. In addition, as a result of defendants' illegal actions and course of
24 conduct during the Relevant Period, the Company is now the subject of several class action law suits
25 which allege violations of federal securities laws. As a result, Ariba has expended and will continue
26 to expend significant sums of money. Such expenditures include, but are not limited to:

27 a. Costs incurred to carry out internal investigations, including legal fees paid
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1 In addition, as officers and/or directors of a publicly held company, the Individual Defendants had
 2 a duty to promptly disseminate accurate and truthful information with regard to the Company's
 3 accounting transactions so that the market price of the Company's stock would be based on truthful
 4 and accurate information.

5 32. The Individual Defendants, because of their positions of control and authority as
 6 directors and/or officers of Ariba, were able to and did, directly and/or indirectly, exercise control
 7 over the wrongful acts complained of herein, as well as the contents of the various public statements
 8 issued by the Company. Because of their advisory, executive, managerial, and directorial positions
 9 with Ariba, each of the Individual Defendants had access to adverse non-public information about the
 10 financial condition, operations, and improper representations of Ariba.

11 33. At all times relevant hereto, each of the Individual Defendants was the agent of each
 12 of the other Individual Defendants and of Ariba, and was at all times acting within the course and
 13 scope of such agency.

14 34. To discharge their duties, the officers and directors of Ariba were required to exercise
 15 reasonable and prudent supervision over the management, policies, practices and controls of the
 16 financial affairs of the Company. By virtue of such duties, the officers and directors of Ariba were
 17 required to, among other things:

18 a. refrain from acting upon material inside corporate information to benefit
 19 themselves;

20 b. ensure that the Company complied with its legal obligations and requirements,
 21 including acting only within the scope of its legal authority and disseminating truthful and accurate
 22 statements to the SEC and the investing public;

23 c. conduct the affairs of the Company in an efficient, business-like manner so as
 24 to make it possible to provide the highest quality performance of its business, to avoid wasting the
 25 Company's assets, and to maximize the value of the Company's stock;

26 d. properly and accurately guide investors and analysts as to the true financial
 27 condition of the Company at any given time, including making accurate statements about the
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1 filings. During the Relevant Period, Touw sold 1 million shares of Ariba stock for proceeds of over
 2 \$58.7 million.

3 28. Defendant David L. Rome ("Rome") Vice President of Ariba. Rome is a citizen of
 4 California. Because of Rome's position, he knew the adverse non-public information about the
 5 business of Ariba, as well as its improper accounting transactions, finances, markets and present and
 6 future business prospects, via access to internal corporate documents, conversations and connections
 7 with other corporate officers and employees, attendance at management meetings and via reports and
 8 other information provided to him in connection therewith. During the Relevant Period, Rome
 9 participated in the issuance of false and/or misleading statements, including the preparation of the
 10 false and/or misleading press releases and SEC filings. During the Relevant Period, Rome sold over
 11 1.5 million shares of Ariba stock for proceeds of over \$106.5 million.

12 29. The defendants identified in ¶¶12-28 are referred to herein as the "Director
 13 Defendants." The defendants identified in ¶¶12-13, 21-28 are referred to herein as the "Officer
 14 Defendants." The defendants identified in ¶¶12-13, 15-16, 18-28 are referred to herein as the "Insider
 15 Selling Defendants." Collectively, the Director Defendants, the Officer Defendants and the Insider
 16 Selling Defendants are referred to herein as the "Individual Defendants."

17 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

18 30. By reason of their positions as officers, directors, and/or fiduciaries of Ariba and
 19 because of their ability to control the business and corporate affairs of Ariba, the Individual
 20 Defendants owed Ariba and its shareholders fiduciary obligations of trust, loyalty, good faith and due
 21 care, and were and are required to use their utmost ability to control and manage Ariba in a fair, just,
 22 honest, and equitable manner. The Individual Defendants were and are required to act in furtherance
 23 of the best interests of Ariba and its shareholders so as to benefit all shareholders equally and not in
 24 furtherance of their personal interest or benefit.

25 31. Each director and officer of the Company owes to Ariba and its shareholders the
 26 fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company
 27 and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

1 knew the adverse non-public information about the business of Ariba, as well as its improper
2 accounting transactions, finances, markets and present and future business prospects, via access to
3 internal corporate documents, conversations and connections with other corporate officers and
4 employees, attendance at management meetings and via reports and other information provided to him
5 in connection therewith. During the Relevant Period, Lent participated in the issuance of false and/or
6 misleading statements, including the preparation of the false and/or misleading press releases and SEC
7 filings. During the Relevant Period, Lent sold over 1.4 million shares of Ariba stock for proceeds of
8 over \$107.5 million.

9 26. Defendant Paul L. Melchiorre ("Melchiorre") was, at times relevant hereto, Vice
10 President of North America Operations for Ariba. Melchiorre is a citizen of New Jersey. Because
11 of Melchiorre's position, he knew the adverse non-public information about the business of Ariba, as
12 well as its improper accounting transactions, finances, markets and present and future business
13 prospects, via access to internal corporate documents, conversations and connections with other
14 corporate officers and employees, attendance at management meetings and via reports and other
15 information provided to him in connection therewith. During the Relevant Period, Melchiorre
16 participated in the issuance of false and/or misleading statements, including the preparation of the
17 false and/or misleading press releases and SEC filings. During the Relevant Period, Melchiorre sold
18 536,994 shares of Ariba stock for proceeds of over \$33.5 million.

19 27. Defendant Paul Touw ("Touw") was, at times relevant hereto, Vice President of
20 Corporate Strategy for Ariba. Touw is a citizen of California. Because of Touw's position, he knew
21 the adverse non-public information about the business of Ariba, as well as its improper accounting
22 transactions, finances, markets and present and future business prospects, via access to internal
23 corporate documents, conversations and connections with other corporate officers and employees,
24 attendance at management meetings and via reports and other information provided to him in
25 connection therewith. During the Relevant Period, Touw participated in the issuance of false and/or
26 misleading statements, including the preparation of the false and/or misleading press releases and SEC

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1 at management meetings and via reports and other information provided to him in connection
 2 therewith. During the Relevant Period, Kleissner participated in the issuance of false and/or
 3 misleading statements, including the preparation of the false and/or misleading press releases and SEC
 4 filings. During the Relevant Period, Kleissner sold over 1 million shares of Ariba stock for proceeds
 5 of over \$72.2 million.

6 23. Defendant Kirk A. Cruikshank ("Cruikshank") was, at times relevant hereto, Executive
 7 Vice President of Ariba. Cruikshank is a citizen of California. Because of Cruikshank's position, he
 8 knew the adverse non-public information about the business of Ariba, as well as its improper
 9 accounting transactions, finances, markets and present and future business prospects, via access to
 10 internal corporate documents, conversations and connections with other corporate officers and
 11 employees, attendance at management meetings and via reports and other information provided to him
 12 in connection therewith. During the Relevant Period, Cruikshank participated in the issuance of false
 13 and/or misleading statements, including the preparation of the false and/or misleading press releases
 14 and SEC filings. During the Relevant Period, Cruikshank sold 526,814 shares of Ariba stock for
 15 proceeds of over \$46.2 million.

16 24. Defendant Rune C. Eliasen ("Eliasen") was, at times relevant hereto, Vice President
 17 of Ariba. Eliasen is a citizen of California. Because of Eliasen's position, he knew the adverse
 18 non-public information about the business of Ariba, as well as its improper accounting transactions,
 19 finances, markets and present and future business prospects, via access to internal corporate
 20 documents, conversations and connections with other corporate officers and employees, attendance
 21 at management meetings and via reports and other information provided to him in connection
 22 therewith. During the Relevant Period, Eliasen participated in the issuance of false and/or misleading
 23 statements, including the preparation of the false and/or misleading press releases and SEC filings.
 24 During the Relevant Period, Eliasen sold 556,946 shares of Ariba stock for proceeds of over \$51
 25 million.

26 25. Defendant Robert D. Lent ("Lent") was, at times relevant hereto, Vice President of
 27 Corporate Development for Ariba. Lent is a citizen of California. Because of Lent's position, he
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1 bonus and other compensation and granted him 5,000,000 and 1,400,000 options to purchase Ariba
 2 stock respectively.

3 20. Defendant Robert J. DeSantis ("DeSantis") was, at times relevant hereto, Executive
 4 Vice President of Ariba. DeSantis is a citizen of California. Because of DeSantis' position, he knew
 5 the adverse non-public information about the business of Ariba, as well as its improper accounting
 6 transactions, finances, markets and present and future business prospects, via access to internal
 7 corporate documents, conversations and connections with other corporate officers and employees,
 8 attendance at management meetings and via reports and other information provided to him in
 9 connection therewith. During the Relevant Period, DeSantis participated in the issuance of false
 10 and/or misleading statements, including the preparation of the false and/or misleading press releases
 11 and SEC filings. During the Relevant Period, DeSantis sold over 2.4 million shares of Ariba stock
 12 for proceeds of over \$221.7 million.

13 21. Defendant Edward P. Kinsey ("Kinsey") was, at times relevant hereto, Chief Financial
 14 Officer ("CFO") and Executive Vice President of Ariba. Kinsey is a citizen of California. Because
 15 of Kinsey's positions, he knew the adverse non-public information about the business of Ariba, as well
 16 as its improper accounting transactions, finances, markets and present and future business prospects,
 17 via access to internal corporate documents, conversations and connections with other corporate
 18 officers and employees, attendance at management meetings and via reports and other information
 19 provided to him in connection therewith. During the Relevant Period, Kinsey participated in the
 20 issuance of false and/or misleading statements, including the preparation of the false and/or
 21 misleading press releases and SEC filings. During the Relevant Period, Kinsey sold over 1.3 million
 22 shares of Ariba stock for proceeds of over \$114.4 million.

23 22. Defendant Karl C. Kleissner ("Kleissner") was, at times relevant hereto, Vice President
 24 of Ariba. Kleissner is a citizen of California. Because of Kleissner's position, he knew the adverse
 25 non-public information about the business of Ariba, as well as its improper accounting transactions,
 26 finances, markets and present and future business prospects, via access to internal corporate
 27 documents, conversations and connections with other corporate officers and employees, attendance

1 there would be no directors' and officers' insurance protection and thus, this is a further reason why
2 they will not bring such a suit. On the other hand, if the suit is brought derivatively, as this action is
3 brought, such insurance coverage exists and will provide a basis for the Company to effectuate
4 recovery. If there is no directors' and officers' liability insurance at all then the current directors will
5 not cause Ariba to sue them, since they will face a large uninsured liability.

6 72. Moreover, despite the Individual Defendants having knowledge of the claims and
7 causes of action raised by plaintiff, the current Board of Directors has failed and refused to seek to
8 recover for Ariba for any of the wrongdoing alleged by plaintiff herein.

9 73. Plaintiff has not made any demand on shareholders of Ariba to institute this action
10 since such demand would be a futile and useless act for the following reasons:

11 a. Ariba is a publicly held company with approximately 266 million shares
12 outstanding, and thousands of shareholders;

15 c. Making demand on all shareholders would force plaintiff to incur huge
16 expenses, assuming all shareholders could be individually identified.

COUNT I

**Against Defendants Krach, Calderoni, Mueller and Kinsey
for Disgorgement Under the Sarbanes-Oxley Act**

74. Plaintiffs reallege each prior allegation as though fully set forth herein.

75. Defendants should be required to disgorge the gain they will unjustly obtain at the expenses of Ariba and its shareholders and a constructive trust for the benefit of Ariba and its shareholders should be imposed upon them as contemplated (upon restatement of false and misleading financial statements) by the disgorgement provisions of section 304 of the Sarbanes-Oxley Act of 2002, Public Law 107-204 (effective July 30, 2002).

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1 herein, and thus could not fairly and fully prosecute such a suit even if such suit was instituted by
2 them;

3 j. Any suit by the current directors of Ariba to remedy these wrongs would
4 likely expose the Individual Defendants and Ariba to further violations of the securities laws which
5 would result in civil actions being filed against one or more of the Individual Defendants, thus, they
6 are hopelessly conflicted in making any supposedly independent determination whether to sue
7 themselves;

8 k. Ariba has been and will continue to be exposed to significant losses due to
9 the wrongdoing complained of herein, yet the Individual Defendants and current Board have not filed
10 any lawsuits against themselves or others who were responsible for that wrongful conduct to attempt
11 to recover for Ariba any part of the damages Ariba suffered and will suffer thereby;

12 l. If the current directors were to bring this derivative action against themselves,
13 they would thereby expose their own misconduct, which underlies allegations against them contained
14 in class action complaints for violations of securities law, which admissions would impair their
15 defense of the class actions and greatly increase the probability of their personal liability in the class
16 actions, in an amount likely to be in excess of any insurance coverage available to the Individual
17 Defendants. In essence, they would be forced to take positions contrary to the defenses they will
18 likely assert in the securities class actions. This they will not do. Thus, demand is futile; and

19 m. If Ariba's current and past officers and directors are protected against
20 personal liability for their acts of mismanagement, abuse of control and breach of fiduciary duty
21 alleged in this Complaint by directors' and officers' liability insurance, they caused the Company to
22 purchase that insurance for their protection with corporate funds, *i.e.*, monies belonging to the
23 stockholders of Ariba. However, due to certain changes in the language of directors' and officers'
24 liability insurance policies in the past few years, the directors' and officers' liability insurance policies
25 covering the defendants in this case contain provisions which eliminate coverage for any action
26 brought directly by Ariba against these defendants, known as, *inter alia*, the "insured versus insured
27 exclusion." As a result, if these directors were to sue themselves or certain of the officers of Ariba,
28

1 ii. the improper accounting and insider selling, as detailed herein *supra*, the majority of the Board,
 2 including the defendants listed below, are subject to the following prejudicial entanglements:

3 i. Krach and Kagle are long-time business associates: Defendant Krach
 4 was an entrepreneur in residence at Benchmark Partners Capital ("BCP) during 1996. Defendant
 5 Kagle founded BCP in 1995. Because of their long-standing and entangling business and professional
 6 relationships, neither defendant Krach nor defendant Kagle will take the action requested by plaintiff
 7 herein against one another or the remainder of the Individual Defendants; and

8 ii. Calderoni and Wallman are long-time business associates: Defendant
 9 Calderoni is the former CFO and Vice President for IBM. Defendant Wallman was also a CFO, Vice
 10 President and Controller at IBM from 1993-1995. Because of their long-standing and entangling
 11 business and professional relationships, neither defendant Calderoni nor defendant Wallman will take
 12 the action requested by plaintiff herein against one another or the remainder of the Individual
 13 Defendants;

14 f. The defendant directors of Ariba, as more fully detailed herein, participated
 15 in, approved and/or permitted the wrongs alleged herein to have occurred and participated in efforts
 16 to conceal or disguise those wrongs from Ariba's stockholders or recklessly and/or negligently
 17 disregarded the wrongs complained of herein, and therefore are not disinterested parties;

18 g. In order to bring this suit, all of the directors of Ariba would be forced to sue
 19 themselves and persons with whom they have extensive business and personal entanglements, which
 20 they will not do, thereby excusing demand;

21 h. The acts complained of constitute violations of the fiduciary duties owed by
 22 Ariba's officers and directors and these acts are incapable of ratification;

23 i. Each of the defendant directors of Ariba authorized and/or permitted the false
 24 statements disseminated directly to the public or made directly to securities analysts and which were
 25 made available and distributed to shareholders, authorized and/or permitted the issuance of various
 26 of the false and misleading statements and are principal beneficiaries of the wrongdoing alleged

1 c. According to Ariba's Proxy Statement filed with the SEC on or about January
2 24, 2002, defendants Kagle and Knowling were, during the Relevant Period, members of the Audit
3 Committee. The Audit Committee reviews, acts on and reports to the Board with respect to various
4 auditing and accounting matters, including the selection of the Company's accountants, the scope of
5 the annual audits, fees to be paid to the Company's accountants, the performance of the Company's
6 accountants and the accounting practices of the Company. Nonetheless, the Audit Committee
7 recommended that the Board of Directors include the improper audited consolidated financial
8 statements in Ariba's Annual Reports on Form 10-K for the years ended September 30, 2001 and
9 2000, as filed with the SEC. By such actions, defendants Kagle and Knowling breached their duties
10 by causing or allowing the improper financials described above. As a result of these defendants'
11 breach of their duties, any demand upon them is futile;

23 e. The Individual Defendants, because of their inter-related business,
24 professional and personal relationships, have developed debilitating conflicts of interest which prevent
25 the Board members of the Company from taking the necessary and proper action on behalf of the
26 Company as requested herein. In addition to the conflicts that exist as a result of their participation

1 69. Plaintiff will adequately and fairly represent the interests of Ariba in enforcing and
 2 prosecuting its rights.

3 70. Plaintiff is and was an owner of the stock of Ariba during times relevant to the
 4 Individual Defendants' wrongful course of conduct alleged herein, and remains a shareholder of the
 5 Company.

6 71. The current Board of Directors of Ariba consists of the following individuals:
 7 defendants Krach, Calderoni, Knowling, Kagle and Wallman. Plaintiff has not made any demand
 8 on the present Board of Directors of Ariba to institute this action because such a demand would be
 9 a futile, wasteful and useless act, particularly for the following reasons:

10 a. Defendants Krach and Kagle, as a result of their access to and review of
 11 internal corporate documents, conversations and connections with other corporate officers, employees,
 12 and directors and attendance at management and Board meetings, knew the adverse non-public
 13 information regarding the improper accounting. While in possession of this material adverse
 14 non-public information regarding the Company, Krach and Kagle participated in the illegal insider
 15 selling:

16 i. During the Relevant Period, Krach sold over 4.5 million shares of
 17 Ariba stock for proceeds of over \$193.7 million; and

18 ii. During the Relevant Period, Kagle sold 266,000 shares of Ariba stock
 19 for proceeds of over \$32.5 million. Because these defendants personally benefitted from their
 20 wrongdoing, any demand upon them is futile;

21 b. The principal professional occupation of defendant Calderoni is his
 22 employment with Ariba, pursuant to which he received and continues to receive substantial monetary
 23 compensations and other benefits. Specifically, defendant Calderoni received over \$2.5 million in
 24 salary, bonus and other compensation during the Relevant Period. Defendant Calderoni lacks
 25 independence from defendant Kagle, an interested director due to his insider selling, who controls
 26 Calderoni's compensation as one-half of Ariba's Compensation Committee. Therefore, any demand
 27 upon defendant Calderoni is futile;

1 67. As a result of the Individual Defendants' actions, Ariba's market capitalization has been
 2 damaged by losing over \$19 billion from its Relevant Period high. At the same time that the
 3 defendants were causing Ariba to suffer such devastation of its market capitalization, the Insider
 4 Selling Defendants fared much better by selling over \$1.2 billion of their personally held stock.

Insider	Shares Sold	Proceeds
Krach	4,598,850	\$193,749,060
Kagle	266,000	\$32,599,700
Hegarty	2,539,807	\$126,917,243
Cruikshank	526,814	\$46,241,981
DeSantis	2,412,900	\$221,759,373
Kinsey	1,383,253	\$114,450,625
Eliasen	556,996	\$51,010,477
Tyabji	243,000	\$12,710,780
Kleissner	1,040,000	\$72,276,000
Mueller	150,000	\$19,785,000
Mumford	333,076	\$16,906,776
Lent	1,465,000	\$107,502,862
Melchiorre	536,994	\$33,578,413
Touw	1,000,000	\$58,741,504
Rome	1,586,904	\$106,565,896
TOTAL:	18,639,594	\$1,214,795,689

20 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

21 68. Plaintiff brings this action derivatively in the right and for the benefit of Ariba to
 22 redress injuries suffered, and to be suffered, by Ariba as a direct result of the breaches of fiduciary
 23 duty, abuse of control, gross mismanagement, waste of corporate assets, and unjust enrichment, as
 24 well as the aiding and abetting thereof, by the Individual Defendants. Ariba is named as a nominal
 25 defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this
 26 Court which it would not otherwise have.
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1 management of an enterprise has discharged its stewardship responsibility to owners (stockholders)
2 for the use of enterprise resources entrusted to it was violated. To the extent that management offers
3 securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability
4 to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);

5 e. The principle that financial reporting should provide information about an
6 enterprise's financial performance during a period was violated. Investors and creditors often use
7 information about the past to help in assessing the prospects of an enterprise. Thus, although
8 investment and credit decisions reflect investors' expectations about future enterprise performance,
9 those expectations are commonly based at least partly on evaluations of past enterprise performance
10 (FASB Statement of Concepts No. 1, ¶42);

11 f. The principle that financial reporting should be reliable in that it represents
12 what it purports to represent was violated. That information should be reliable as well as relevant is
13 a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶58-59);

14 g. The principle of completeness, which means that nothing is left out of the
15 information that may be necessary to insure that it validly represents underlying events and conditions
16 was violated (FASB Statement of Concepts No. 2, ¶79); and

17 h. The principle that conservatism be used as a prudent reaction to uncertainty to
18 try to ensure that uncertainties and risks inherent in business situations are adequately considered was
19 violated. The best way to avoid injury to investors is to try to ensure that what is reported represents
20 what it purports to represent (FASB Statement of Concepts No. 2, ¶¶95, 97).

21 66. Further, the undisclosed adverse information concealed by defendants during the
22 Relevant Period is the type of information which, because of SEC regulations, regulations of the
23 national stock exchanges and customary business practice, is expected by investors and securities
24 analysts to be disclosed and is known by corporate officials and their legal and financial advisors to
25 be the type of information which is expected to be and must be disclosed.

INSIDER SALES

1 income was material. Pursuant to GAAP, as set forth in Accounting Principles Board Opinion
 2 ("APB") No. 20, the type of restatement announced by Ariba was to correct for material errors in its
 3 previously issued financial statements. *See* APB No. 20, ¶¶7-13. The restatement of past financial
 4 statements is a disfavored method of recognizing an accounting change as it dilutes confidence by
 5 investors in the financial statements, it makes it difficult to compare financial statements and it is
 6 often difficult, if not impossible, to generate the numbers when restatement occurs. *See* APB No. 20,
 7 ¶14. Thus, GAAP provides that financial statements should only be restated in limited circumstances,
 8 *i.e.*, when there is a change in the reporting entity, there is a change in accounting principles used or
 9 to correct an error in previously issued financial statements. Ariba's restatement was not due to a
 10 change in reporting entity or a change in accounting principle, but rather to errors in previously issued
 11 financial statements. Thus, the restatement is an admission by Ariba that its previously issued
 12 financial results and its public statements regarding those results were false.

13 65. Due to these accounting improprieties, the Company presented its financial results and
 14 statements in a manner which violated GAAP, including the following fundamental accounting
 15 principles:

16 a. The principle that interim financial reporting should be based upon the same
 17 accounting principles and practices used to prepare annual financial statements was violated (APB
 18 No. 28, ¶10);

19 b. The principle that financial reporting should provide information that is useful
 20 to present and potential investors and creditors and other users in making rational investment, credit
 21 and similar decisions was violated (FASB Statement of Concepts No. 1, ¶34);

22 c. The principle that financial reporting should provide information about the
 23 economic resources of an enterprise, the claims to those resources, and effects of transactions, events
 24 and circumstances that change resources and claims to those resources was violated (FASB Statement
 25 of Concepts No. 1, ¶40);

26 d. The principle that financial reporting should provide information about how
 27
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1 the adjustment for the chartered air services amounts to \$1.2 million. The cumulative
 2 adjustments related to the stock options amount to \$7.5 million, consisting of increases
 3 to Ariba's expenses for fiscal 2000 and 2001 of \$8.7 million and \$12.0 million,
 4 respectively, and a reduction of expenses for fiscal 2002 of \$13.2 million.

5 As a result of these accounting adjustments investors should not rely on the
 6 financial information contained in the company's previously filed annual report on
 7 Form 10-K for the fiscal years ended September 30, 2000 and September 30, 2001 or
 8 in the company's quarterly report on Form 10-Q for the quarters ended March 31, 2000
 9 through June 30, 2002.

10 The ongoing accounting review is focused on the company's fiscal 2000
 11 financial statements. Ariba is committed to performing a complete and thorough
 12 review of these matters and expects the review to be completed by the end of February
 13 2003. Ariba intends to file its annual report on Form 10-K for the fiscal year ended
 14 September 30, 2002 after the completion of the review.

15 Ariba also announced that it expects to receive a Nasdaq staff determination
 16 that it is subject to delisting from the Nasdaq Stock Market as a result of failing to
 17 timely file its annual report on Form 10-K for the fiscal year ended September 30,
 18 2002. Upon receipt of this determination, Ariba intends to request a hearing before
 19 a Nasdaq panel to review the staff determination. There can be no assurance that the
 20 Nasdaq panel will grant Ariba's request for continued listing.

21 63. On April 10, 2003, the Individual Defendants caused the Company to issue a press
 22 release titled "Ariba Completes Accounting Review and Files Forms 10-K and 10-Q with the SEC."
 23 The press release stated in relevant part:

24 Ariba, Inc., the leading Enterprise Spend Management (ESM) solutions
 25 provider, today announced that the company's internal review of certain accounting
 1 matters is complete and the company's annual report on Form 10-K for the fiscal year
 2 ended September 30, 2002 and quarterly report on Form 10-Q for the quarter ended
 3 December 31, 2002 have been filed with the Securities and Exchange Commission
 4 (SEC). As a result of this review, Ariba has restated its financial statements for the
 5 fiscal years ended September 30, 2000 and 2001, and for the quarters ended December
 6 31, 1999 through June 30, 2002. The company has also adjusted the preliminary
 7 financial statement information for the quarter and fiscal year ended September 30,
 8 2002 (announced on October 23, 2002) and for the quarter ended December 31, 2002
 9 (announced on January 23, 2003).

20 * * *

21 The net effect of all the accounting adjustments is to increase the company's
 22 net loss by \$9.8 million in fiscal year 2000 and \$14.1 million in fiscal year 2001,
 23 decrease the net loss by \$22.1 million in fiscal year 2002, and increase the net loss by
 24 \$2.0 million in the first quarter of fiscal year 2003. The cumulative net effect of the
 25 adjustments is to increase the company's accumulated deficit at December 31, 2002
 by \$3.8 million to \$4.24 billion.

26 64. The fact that Ariba will restate its financial statements for 2000-2002 is an admission
 27 that the financial statements originally issued were false and that the overstatement of revenues and
 28

1 are not prepared in compliance with GAAP are presumed to be misleading and inaccurate, despite
 2 footnote or other disclosure. Regulation S-X requires that interim financial statements must also
 3 comply with GAAP, with the exception that interim financial statements need not include disclosure
 4 which would be duplicative of disclosures accompanying annual financial statements. 17 C.F.R.
 5 §210.10-01(a).

6 60. In Ariba's 2000-2001 Forms 10-K, it represented that it recognized revenue and
 7 expenses in accordance with GAAP.

8 61. During the Relevant Period, Ariba failed to properly recognize expenses required to
 9 be recognized by GAAP.

10 62. On January 15, 2003, the Individual Defendants caused the Company to issue a press
 11 release entitled, "Ariba Provides Update on Accounting Review and Restatement of Financial
 12 Statements." The press release stated in part:

13 Ariba, Inc. announced today that it will restate its financial statements for the fiscal
 14 years ended September 30, 2001 and 2000 and for the quarters ended March 31, 2000
 15 through June 30, 2002 as a result of an ongoing review of accounting matters. The
 16 company also announced that because this review is not yet completed, it has not yet
 17 filed its annual report on Form 10-K for the fiscal year ended September 30, 2002 with
 18 the Securities and Exchange Commission.

19 As previously disclosed, Ariba has determined that, for accounting purposes,
 20 it should treat a \$10.0 million payment provided personally by Keith Krach, Ariba's
 21 chairman and co-founder, in March 2001 to Larry Mueller, its president and chief
 22 operating officer at the time, as a \$10.0 million capital contribution from Mr. Krach
 23 to Ariba and the payment of compensation from Ariba to Mr. Mueller. Because no
 24 company funds were used and there was no commitment to or from Ariba, the
 25 company originally viewed the payment as a personal transaction.

26 The company has further determined that chartered air services, provided
 27 personally by Mr. Krach to Mr. Mueller, should be treated similarly as a capital
 28 contribution from Mr. Krach to Ariba and a payment of compensation from the
 company to Mr. Mueller. These services were provided over the period from
 September 2000 through July 2001 at a total cost of \$1.2 million.

In addition, Ariba has concluded that certain stock options issued to a limited
 number of individuals by companies that Ariba acquired during fiscal 2000 should be
 accounted for as stock-based compensation expense to Ariba, rather than amortized
 as goodwill. As a result, an increase in non-cash stock-based compensation expense
 and a reduction of goodwill amortization expense will be reflected in Ariba's restated
 financial statements for fiscal 2000, 2001 and 2002.

None of the above-described adjustments has any impact on Ariba's cash
 balances or net cash flows for any period. In addition to the \$10.0 million payment,

1 The audit committee's review has primarily focused on a \$10 million payment,
 2 provided personally by Keith Krach, the company's chairman and co-founder, in
 3 March 2001 to Larry Mueller, the company's president and chief operating officer at
 4 the time of the payment. Because no company funds were used and there was no
 5 commitment to or from Ariba, the company originally viewed the payment as a
 6 personal transaction. Ariba has now concluded that for accounting purposes, the
 7 company should treat the \$10 million payment as a capital contribution from Mr.
 8 Krach to the company and the payment of compensation from the company to Mr.
 9 Mueller.

10 The \$10 million payment at issue does not affect the company's results of
 11 operations for fiscal year 2002 nor does it affect the company's results of operations
 12 for any quarter other than the quarter ended March 31, 2001. The company's restated
 13 financial statements for the fiscal year ended September 30, 2001 and for the quarter
 14 ended March 31, 2001 will reflect a non-cash charge to the company's fiscal 2001
 15 operating expenses that does not affect the company's cash balances, net assets or total
 16 stockholders' equity at March 31, 2001 or for any other period.

17 The audit committee began this review on December 21, 2002, and expects to
 18 complete it shortly. Although the review is not completed. Ariba has determined that
 19 it will restate its financial statements for the fiscal year ended September 30, 2001 and
 20 the quarter ended March 31, 2001. The company's previously filed financial
 21 statements for these periods do not reflect the \$10 million payment. As a result, the
 22 restated financial statements will disclose an additional \$10 million in compensation
 23 for such periods. Investors accordingly should not rely on the financial information
 24 contained in the company's previously filed annual report on Form 10-K for the fiscal
 25 year ended September 30, 2001 or in the company's quarterly report on Form 10-Q for
 26 the quarter ended March 31, 2001. Restated financial statements for these periods will
 27 be included in Ariba's annual report on Form 10-K for the fiscal year ended September
 28 30, 2002 filed with the SEC.

17 **IMPROPER FINANCIAL REPORTING 18 DURING THE RELEVANT PERIOD**

19 57. The 2000-2002 results were included in Forms 10-Q and 10-K filed with the SEC. The
 20 results were also included in press releases disseminated to the public.

21 58. The Individual Defendants caused the Company to admit that it inappropriately
 22 recorded transactions included in its 2000-2002 results, and has restated those results to increase the
 23 Company's expenses such that its 2000-2002 financial statements were not a fair presentation of
 24 Ariba's results and were presented in violation of Generally Accepted Accounting Principles
 25 ("GAAP") and SEC rules.

26 59. GAAP are those principles recognized by the accounting profession as the conventions,
 27 rules and procedures necessary to define accepted accounting practice at a particular time. SEC
 28 Regulation S-X (17 C.F.R. §210.4-01(a)(1)) states that financial statements filed with the SEC which

1 "In light of the continued soft global economic environment, I am pleased with
 2 the solid results for the quarter," said Bob Calderoni, president and CEO of Ariba.
 3 "The Ariba® Spend Management suite, especially Ariba® Enterprises Sourcing™,
 4 gained traction in our existing installed base as well as with new customers. As I look
 out to the second half of this calendar year, I expect further reach from our new
 products. I feel this positions us well for pro forma profitability and believe we could
 achieve pro forma break-even as early as June."

5 55. On April 24, 2002, the Individual Defendants caused the Company to issue a press
 6 release entitled, "Ariba Reports Results for Second Quarter Fiscal 2002; Quarterly Revenues Grow
 7 to \$57.2 Million." The press release stated in part:

8 Ariba, Inc., the leading Enterprise Spend Management (ESM) solutions provider,
 9 today announced results for the second fiscal quarter ended March 31, 2002.

10 Revenues for the second quarter of fiscal 2002 were \$57.2 million. Pro forma
 11 net income for the quarter excluding certain non-cash and special charges was \$1.1
 12 million, or \$0.00 per share, beating the First Call consensus estimate of a loss of \$0.01
 13 per share. Ariba's pro forma operating results exclude expenses related to the
 14 amortization of goodwill and other intangible assets, business partner warrants,
 15 restructuring and lease abandonment costs and stock-based compensation, all of which
 16 are included for GAAP reporting purposes. For the second quarter of fiscal 2001, pro
 17 forma loss was \$48.3 million, or a loss of \$0.20 per share. Net loss on a GAAP basis
 18 for the second quarter of fiscal 2002 was \$154 million, or a loss of \$0.60 per share.
 19 During the corresponding quarter in fiscal 2001 the net loss on a GAAP basis was \$1.8
 20 billion, or a loss of \$7.60 per share.

21 "Despite a challenging market environment, I am pleased with Ariba's
 22 performance during the March quarter. Ariba beat expectations once again,
 23 strengthened revenues, improved pro forma earnings per share, and demonstrated
 24 stability across the income statement and balance sheet," said Bob Calderoni, president
 25 and CEO of Ariba. "Ariba is building a reputation as a company that executes even
 26 in tough market conditions. We are well positioned for any acceleration in top line
 27 revenue to directly result in pro forma profitability and earnings growth. We have
 28 successfully hit pro forma breakeven before schedule and expect pro forma earnings
 per share to increase when the market for IT spending expands."

56. On December 31, 2002, the Individual Defendants caused the Company to issue a press
 release entitled, "Ariba to Restate Fiscal Year 2001 Financial Statements; Delays Filing of Fiscal Year
 2002 Annual Report on Form 10-K." The press release stated in part:

Ariba, Inc. announced today that it will restate its financial statements for the fiscal
 year ended September 30, 2001 for the quarter ended March 31, 2001 as a result of an
 ongoing review by the company's audit committee. The review is focused on the
 accounting treatment relating to certain benefits provided to a limited number of
 employees of the company during fiscal years 2000 and 2001. In addition, Ariba has
 delayed the filing of its annual report on Form 10-K for the fiscal year ended
 September 30, 2002, which was due on Dec. 30, 2002, until this review is complete.
 In connection with this delay, Ariba is filing a Notification of Late Filing or Form 12b-
 25 with the Securities and Exchange Commission (SEC).

Quarterly Results

Revenues for the fourth quarter of fiscal 2001 were at \$62.6 million. Net loss for the quarter excluding certain non-cash and special charges was \$27.7 million or a loss of \$0.11 per share, beating the First Call consensus estimate of a loss of \$0.13 per share. During the corresponding quarter in fiscal 2000, the net loss was \$1.1 million or a loss of \$0.00 per share, excluding certain non-cash and special charges.

Net loss on a GAAP basis for the fourth quarter of fiscal 2001 was \$224.3 million, or a loss of \$0.89 per share. During the corresponding quarter in fiscal 2000 the net loss on a GAAP basis was \$339.3 million, or a loss of \$1.50 per share.

Fiscal Year Results

Fiscal year 2001 results were \$408.8 million, up 47 percent versus \$279.0 million in fiscal 2000. Net loss for the fiscal year 2001 excluding certain non-cash and special charges was \$88.1 million or a loss of \$0.36 per share. During fiscal 2000, the net loss was \$29.5 million or a loss of \$0.15 per share, excluding certain non-cash and special charges.

Net loss on a GAAP basis for fiscal year 2001 was \$2,680.7 million, or a loss of \$10.96 per share. During the corresponding fiscal year 2000, net loss on a GAAP basis was \$792.8 million, or a loss of \$4.10 per share.

"We reported a solid quarter despite the soft economic environment and the unexpected and tragic events in September," said Bob Calderoni, president and CEO, Ariba. "Because we quickly responded to the early signs of the changing economic climate and took the necessary steps, our focus now is entirely on customers and our strategy for growth. Our revenues are in line with our original forecast, our cash remains strong at \$294 million, and we are well positioned for future profitability.

Our October 17, 2001, Ariba announced the appointment of Bob Calderoni as president and CEO. Founder Keith Krach will remain as chairman of the board.

54. On January 22, 2002, the Individual Defendants caused the Company to issue a press release entitled, "Ariba Reports Results for First Quarter Fiscal 2002; Quarterly Revenues Total \$55.3 Million." The press release stated in part:

Ariba Inc., the leading enterprise spend management solutions provider, today announced results for the first fiscal quarter ended December 31, 2001.

Revenues for the first quarter of fiscal 2002 were \$55.3 million. Pro forma net loss for the quarter excluding certain non-cash and special charges was \$6.9 million or a loss of \$0.03 per share, beating the First Call consensus estimate of a loss of \$0.05 per share. Ariba's pro forma operating results exclude expenses related to the amortization of goodwill and other intangible assets, business partner warrants and stock-based compensation, all of which are included for GAAP reporting purposes. During the corresponding quarter in fiscal 2001, pro forma net income was \$14.0 million, or \$0.05 per share, excluding certain non-cash and special charges. Net loss on a GAAP basis for the first quarter of fiscal 2002 was \$161.3 million, or a loss of \$0.63 per share. During the corresponding quarter in fiscal 2001 the net loss on a GAAP basis was \$347.6 million, or a loss of \$1.48 per share.

1 37 analysts polled by First Call/Thomson Financial. Sales rose to \$134.9 million from
 2 \$17.1 million.

3 Ariba's losses and revenue are growing as the software maker boosts sales staff
 4 and marketing expenses to win business customers and build Web marketplaces where
 5 companies can buy and sell supplies. Operating expenses roles to \$117.5 million,
 6 from \$19.9 million a year ago.

7 52. On April 20, 2001, the Individual Defendants caused the Company to issue a press
 8 release entitled, "Ariba Announces Second Quarter 2001 Results; Q2 Fiscal 2001 Revenues Up 126
 9 Percent Year Over Year." The press release stated in part:

10 Ariba, Inc., the leading business-to-business (B2B) eCommerce platform and network
 11 services provider, today announced results for the fiscal second quarter ended March
 12 31, 2001.

13 10 Revenues for the second quarter of fiscal 2001 were \$90.7 million, up 126
 14 11 percent from the same period last year. Pro forma net loss for the quarter excluding
 15 12 certain special charges was \$48.3 million, or a loss of \$0.20 per share. During the
 16 17 corresponding quarter in fiscal 2000, the comparable pro forma net loss was \$11.5
 17 18 million, or a loss of \$0.06 per share, excluding certain special charges.

18 * * *

19 14 On April 2 the company revised its guidance for the quarter, reflecting the
 20 15 weakening macroeconomic climate. The Company also announced a plan to reduce
 21 16 spending across all major areas, including a reduction in workforce by approximately
 22 17 30 percent of the total employee base.

23 18 16 "The slowdown in both the economy and technology spending impacted our
 24 19 business more dramatically than we had expected," said Bob Calderoni, Ariba's CFO.
 25 20 " While the current uncertain market conditions provide low visibility going forward,
 26 21 we took decisive and immediate actions to realign our expense structure to reflect
 27 22 today's economic realities. We believe a strong focus on operational efficiencies and
 28 23 financial discipline will help us weather the current environment and should position
 29 24 us well as the economy recovers."

30 20 As a result of the difficult economic conditions and other factors, Ariba has
 31 21 incurred a total of approximately \$33.6 million in special charges relating to, among
 32 22 other things, equity investments, and costs related to the cancelled Agile acquisition.
 33 23 The Company also has written down approximately \$1.4 billion of goodwill related
 34 24 to an acquisition.

35 25 53. On October 24, 2001, the Individual Defendants caused the Company to issue a press
 36 26 release entitled, "Ariba Reports Results for Fourth Quarter and Fiscal 2001; Q4 Fiscal 2001 Revenue
 37 27 Beats Analyst Estimates." The press release stated in part:

38 28 Ariba, Inc., the leading spend management solutions provider, today announced results
 39 29 for the fourth quarter and fiscal year ended September 30, 2001.

1 \$0.06 per share, beating the First Call consensus estimate of a loss of \$0.08 per share.
 2 During the corresponding quarter in fiscal 1999, the net loss was \$2.8 million or a loss
 3 of \$0.07 per share, excluding non-operating charges. Including all charges, net loss
 4 for the second quarter of fiscal 2000 was \$125.9 million or a loss of \$0.70 per share,
 reflecting costs associated primarily for acquisitions. All results are adjusted for a 2-
 for-1 stock split effective March 31, 2000.

5 * * *

6 "The second quarter was a watershed period for Ariba. We increased our
 7 customer base by over 100 percent and grew our revenue by 322 percent," said Keith
 8 Krach, chairman and chief executive officer of Ariba. "At the same time, we beat
 analyst EPS expectations and showed another consecutive quarter of cash flow
 positive from operations, demonstrating the Company's ability to grow rapidly while
 continuing to show high quality financial performance."

9 50. On July 12, 2000, the Individual Defendants caused the Company to issue a press
 10 release entitled, "Ariba Announces Record Third Quarter Revenues of \$80.7 Million, Up 578%; Net
 11 Loss Per Share \$0.05, Beats First Call Estimates." The press release stated in part:

12 Ariba, Inc., the leading business-to-business (B2B) eCommerce platform and network
 13 services provider, today announced record results for the third fiscal quarter ended
 June 30, 2000.

14 Revenues for the third quarter of fiscal 2000 marked the largest quarter in
 15 Ariba's history at \$80.7 million, up 101 percent from the previous quarter and up 578
 percent from the same period last year. Net loss for the quarter excluding non-
 operating charges was \$11.3 million or a loss of \$0.05 per share, beating the First Call
 16 consensus estimate of a loss of \$0.08 per share. During the corresponding quarter in
 fiscal 1999, the net loss was \$6.0 million or a loss of \$0.11 per share, excluding non-
 17 operating charges.

18 "Our focus on delivering quality technology, deployment excellence, great
 19 partnerships and customer driven results is once again manifested in our high quality
 financial performance this quarter. We doubled our revenues from last quarter, signed
 20 more than 100 new deals, and deployed more than twice as many customers as last
 year," said Keith Krach, Ariba's chairman and chief executive officer. "Going
 21 forward, Ariba will continue to provide the leadership, innovation and underlying B2B
 infrastructure creating unprecedented value for buyers, suppliers and marketplaces."

22 51. On October 18, 2000, *Bloomberg* carried an article entitled, "Ariba 4th-Qtr Loss
 23 Widens on Higher Expenses as Sales Surge." The article stated in part:

24 Ariba, Inc., which makes software to help companies buy and sell goods over
 25 the Internet, said its fourth-quarter loss widened as expenses surged and sales rose
 more than eightfold.

26 The loss widened to \$339.3 million, or \$1.50 a share, from \$9.88 million, or
 27 7 cents, a year ago. Excluding amortization, Ariba lost \$1.06 million, or break-even
 a share. On that basis, it was expected to lose 5 cents a share, the average estimate of

VERIFICATION

I, Laurie A. Traktman, hereby declare as follows:

1. I am a member of the law firm of Gilbert & Sackman, A Law Corporation, counsel for Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. I am informed and believe the matters therein are true and on that ground allege that the matters stated therein are true.

2. I make this Verification because Plaintiff is absent from the County of Los Angeles where I maintain my office.

Executed this 25th day of June, 2003, at Los Angeles, California.



Laurie A. Traktman

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: June 25, 2003

**GILBERT & SACKMAN, A LAW
CORPORATION**
JAY SMITH
LAURIE A. TRAKTMAN

LAURIE A. TRATKMAN

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Plaintiffs' Lead Co-Counsel

1 WHEREFORE, plaintiff demands judgment as follows:

2 A. Against all of the Individual Defendants and in favor of the Company for the amount
3 of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary
4 duties, abuse of control, gross mismanagement, waste of corporate assets and unjust enrichment;

5 B. Determining and awarding Ariba treble damages pursuant to California Corporations
6 Code §25502.5(a) for the Insider Selling Defendants' violations of California Corporations Code
7 §25402;

8 C. Extraordinary equitable and/or injunctive relief as permitted by law, equity and state
9 statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust
10 on or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to
11 assure that plaintiff on behalf of Ariba has an effective remedy;

12 D. Awarding to Ariba restitution from the defendants, and each of them, and ordering
13 disgorgement of all profits, benefits and other compensation obtained by the defendants;

14 E. Awarding to plaintiff the costs and disbursements of the action, including reasonable
15 attorneys' fees, accountants' and experts' fees, costs, and expenses; and

16 F. Granting such other and further relief as the Court deems just and proper.

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100. As a result of the misconduct and breaches of duty alleged herein, the Individual Defendants are liable to the Company.

101. Plaintiff on behalf of Ariba has no adequate remedy at law.

COUNT VIII

Against All Defendants for Waste of Corporate Assets

102. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

103. As a result of the improper accounting, and by failing to properly consider the interests of the Company and its public shareholders by failing to conduct proper supervision, defendants have caused Ariba to waste valuable corporate assets by paying incentive based bonuses to certain of its executive officers.

104. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

105. Plaintiff on behalf of Ariba has no adequate remedy at law.

COUNT VIII

Against All Defendants for Unjust Enrichment

106. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

107. By their wrongful acts and omissions, defendants were unjustly enriched at the expense of and to the detriment of Ariba.

108. Plaintiffs seek restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

109. Plaintiffs, as shareholders and representatives of Ariba, seek restitution and disgorgement of profits for the Company as hereinafter set forth.

PRAYER FOR RELIEF

1 90. As a direct and proximate result of the Individual Defendants' failure to perform their
2 fiduciary obligations, Ariba has sustained significant damages. As a result of the misconduct alleged
3 herein, the Individual Defendants are liable to the Company.

4 91. Plaintiff on behalf of Ariba has no adequate remedy at law.

COUNT V

Against All Defendants for Abuse of Control

7 92. Plaintiffs incorporate by reference and reallege each and every allegation contained
8 above, as though fully set forth herein.

9 93. The Individual Defendants' misconduct alleged herein constituted an abuse of their
10 ability to control and influence Ariba, for which they are legally responsible.

11 94. As a direct and proximate result of the Individual Defendants' abuse of control, Ariba
12 has sustained significant damages.

13 95. As a result of the misconduct alleged herein, the Individual Defendants are liable to
14 the Company.

15 96. Plaintiff on behalf of Ariba has no adequate remedy at law.

COUNT VI

Against All Defendants for Gross Mismanagement

18 97. Plaintiffs incorporate by reference and reallege each and every allegation contained
19 above, as though fully set forth herein.

20 | //

21 98. By their actions alleged herein, the Individual Defendants, either directly or through
22 aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard
23 to prudently managing the assets and business of Ariba in a manner consistent with the operations of
24 a publicly held corporation.

25 99. As a direct and proximate result of the Individual Defendants' gross mismanagement
26 and breaches of duty alleged herein, Ariba has sustained significant damages in excess of hundreds
27 of millions of dollars.

83. The information described above was proprietary non-public information concerning the Company's financial condition and future business prospects. It was a proprietary asset belonging to the Company, which the Insider Selling Defendants used for their own benefit when they sold Ariba common stock.

84. At the time of their stock sales, the Insider Selling Defendants knew of the Company's improper accounting and financial results. The Insider Selling Defendants' sales of Ariba common stock while in possession and control of this material adverse non-public information was a breach of their fiduciary duties of loyalty and good faith.

85. Since the use of the Company's proprietary information for their own gain constitutes a breach of the Insider Selling Defendants' fiduciary duties, the Company is entitled to the imposition of a constructive trust on any profits the Insider Selling Defendants obtained thereby.

COUNT IV

Against All Defendants for Breach of Fiduciary Duty

86. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

87. The Individual Defendants owed and owe Ariba fiduciary obligations. By reason of their fiduciary relationships, the Officer Defendants and Director Defendants owed and owe Ariba the highest obligation of good faith, fair dealing, loyalty and due care.

88. The Individual Defendants, and each of them, violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision.

89. Each of the Individual Defendants had actual or constructive knowledge that they had caused the Company to improperly misrepresent the financial results of the Company and failed to correct the Company's publicly reported financial results and guidance. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

COUNT II

Against the Insider Selling Defendants for Violation of California Corporations Code §25402

76. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

77. At the time that the Insider Selling Defendants sold their Ariba common stock as set forth herein, by reason of their high executive and/or directorship positions with Ariba, the Insider Selling Defendants had access to highly material information regarding the Company, including the information set forth herein regarding the true adverse facts of Ariba's improper accounting.

78. At the time of such sales, that information was not generally available to the public or the securities markets. Had such information been generally available, it would have significantly reduced the market price of Ariba shares at that time.

79. The Insider Selling Defendants, and each of them, had actual knowledge of material, adverse non-public information and thus sold their Ariba common stock in California in violation of California Corporations Code §25402.

80. Pursuant to California Corporations Code §25502.5, the Insider Selling Defendants, and each of them, are liable to Ariba for damages in an amount up to three times the difference between the price at which Ariba common stock was sold by the defendants, and each of them, and the market value that Ariba common stock would have had at the time of the sale if the information known to the defendants, and each of them, had been publicly disseminated prior to that time and a reasonable time had elapsed for the market to absorb the information.

COUNT III

Against the Insider Selling Defendants for Breach of Fiduciary Duties for Insider Selling and Misappropriation of Information

81. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

82. At the time of the stock sales set forth herein, the Insider Selling Defendants knew the information described above, and sold Ariba common stock on the basis of such information.